

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MICHAEL ORTH,
Plaintiff,

vs.

JOSEPH AUGUSTYN, CON-WAY TRANS
SERVICES, INC. d/b/a XPO LOGISTICS
FREIGHT, INC.,
Defendants.

CAUSE NO. 2:20-cv-00120-JTM-JPK

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(B)(6) AND FED. R. CIV. P. 17(A)**

Defendants, Joseph Augustyn and XPO Logistics Freight, Inc., formerly d/b/a Con-Way Central Express, Inc. (incorrectly sued as Con-Way Trans Services, Inc. d/b/a XPO Logistics Freight, Inc) (collectively, "Defendants"), by counsel, Edward W. Hearn and Jennifer M. Carpenter of JOHNSON & BELL, P.C., move this Court for the entry of an Order dismissing this case pursuant to FED. R. CIV. P. 12(b)(6) and Fed. R. Civ. P. 17(a) for failure to state a claim on which relief can be granted because Michael Orth is not the real party in interest. In support of this Motion, Defendants have submitted their Memorandum in Support.

WHEREFORE, Defendants respectfully request that this Court enter an Order dismissing this case pursuant to FED. R. CIV. P. 12(b)(6) and Fed. R. Civ. P. 17(a) and granting such other and further relief warranted under the circumstances presented.

Respectfully submitted:

/s/Jennifer M. Carpenter

Edward W Hearn, No.18691-64

Jennifer M. Carpenter, No 35181-71

Johnson & Bell, P.C.

11051 Broadway, Suite B

Crown Point, Indiana 46307

Email: hearne@jbltd.com

Email: Carpenterj@jbltd.com

Phone: (219) 791-1900

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jennifer M. Carpenter